

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:)
)
CIRCUIT CITY STORES, INC., et al.,) Case No. 08-35653-KRH
) Chapter 11
Debtors.) (Jointly Administered)

**COTTONWOOD CORNERS – PHASE V, LLC’S RESPONSE TO DEBTORS’
THIRTY-FIFTH OMNIBUS OBJECTION TO CLAIMS (DISALLOWANCE OF
(I) CERTAIN AMENDED CLAIMS; AND (II) CERTAIN DUPLICATE CLAIMS**

Cottonwood Corners – Phase V, LLC (the “Claimant”), by counsel, hereby responds as follows to the Debtors’ Thirty-Fifth Omnibus Objection to Claims (Disallowance of (I) Certain Amended Claims; and (II) Certain Duplicate Claims (the “Objection”):

1. The Claimant, as the landlord, leased to Circuit City Stores West Coast, Inc. (the “Tenant”) certain non-residential real property under a lease dated February 1, 2004 (the “Lease”), for premises located at 10420 Coors Boulevard Bypass, Albuquerque, NM 87114 (Store No. 3378).¹

2. In connection with the Lease, Circuit City Stores, Inc. (the “Guarantor”), executed a Lease Guaranty also dated February 1, 2004 (the “Guaranty”), and for the benefit of the Tenant. Pursuant to the Guaranty’s terms, the Guarantor guaranteed the full and timely performance by the Tenant of its obligations to the Claimant under the Lease.²

3. On or about June 29, 2009, the Claimant timely filed a claim for administrative

¹ A copy of the Lease is attached to the claim.

² A copy of the Guaranty is attached to the claim.

Michael P. Falzone (VSB No. 22324)
Sheila deLa Cruz (VSB No. 65395)
Hirschler Fleischer, PC
Post Office Box 500
Richmond, VA 23218-0500
(804) 771-9500
(804) 644-0957 (fax)

Counsel for Cottonwood Corners – Phase V, LLC

expenses in the amount of \$70,388.88 against the Tenant.

4. On or about June 29, 2009, the Claimant also timely filed a claim for administrative expenses in the amount of \$70,388.88 against the Guarantor.

5. The Debtors have identified the above administrative expense claims as Claim No. 13892 and Claim No. 13893 (collectively, the "Claims"). However, the Debtors have incorrectly asserted that the Claimant filed both Claims solely against the Guarantor.

6. Accordingly, in the Objection, the Debtors seek the disallowance of Claim No. 13893 in that such claim is allegedly duplicative of Claim No. 13892. The Debtors further seek the allowance of Claim No. 13892 as the sole surviving claim with respect to the Claimant's administrative expense claims.

7. The Objection has no basis in law and fact in that the Claimant filed separate claims for administrative expenses against the Tenant and the Guarantor. Pursuant to the Lease and the Guaranty, the Tenant and the Guarantor are independently liable to Claimant for payment of its administrative expenses.

8. Accordingly, the Claims are not duplicative and the Court should not disallow either of the Claims at this stage in the claims process.

WHEREFORE, for the reasons stated herein, the claimant, Cottonwood Corners – Phase V, LLC, respectfully requests this Court for entry of an Order: (a) denying the Debtors' Objection as to the disallowance of Claim No. 13893 as a duplicate claim of Claim No. 13892; and (b) granting such other and further relief to the Claimant as this Court deems just and proper.

Dated: September 15, 2009

Respectfully submitted,

/s/ Michael P. Falzone

Michael P. Falzone (VSB No. 22324)
Sheila deLa Cruz (VSB No. 65395)
HIRSCHLER FLEISCHER, P.C.
Post Office Box 500
Richmond, VA 23218-0500
Telephone: (804) 771-9500
Facsimile: (804) 644-0957

*Counsel for claimant, Cottonwood Corners
– Phase V, LLC*

Declaration of Sheila deLa Cruz, Esq.

Ms. Sheila deLa Cruz, Esq. states as follows:

I serve as counsel for the claimant, Cottonwood Corners – Phase V, LLC. With respect to the factual allegations contained in the foregoing Response, I have personal knowledge of such facts and represent that such allegations are true and accurate to the best of my knowledge, information and belief.

Dated: September 15, 2009

By: 
Sheila deLa Cruz, Esq.

Title: Counsel for Cottonwood Corners – Phase V,
LLC

CERTIFICATE OF SERVICE

I herby certify that on this 15th day of September, 2009, a true and correct copy of the above and foregoing was served by the method or methods specified below:

 X by **electronically** filing it with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

/s/ Michael P. Falzone

Michael P. Falzone